

SAN JOSE APPEALS HEARING BOARD MINUTES
THURSDAY, SEPTEMBER 12, 2013
6:30 P.M., COUNCIL CHAMBERS

1. The meeting of the San Jose Appeals Hearing Board convened this date at 6:30 p.m., Council Chambers, City Hall, with the following members in attendance: Chair David Parker, Commissioners Rajwant Bains, Timothy Kenny, William Murphy, and Susan Ruscigno. Vice Chair Troy Overton and Commissioner Robyn Shearin were absent.

Staff Present: Diane Buchanan, Code Enforcement Official
Tony Gonzalez, Code Enforcement
Debbie Morales, Appeals Hearing Board Secretary
Peter Nwokolo, Code Enforcement
David Pieruccini, Code Enforcement
Carolyn Slezak, Code Enforcement
Rosa Tsongtaatarii, Senior Deputy City Attorney
Todd Waltrip, Code Enforcement

2. **Opening Remarks and Approval of Minutes**

Chair Parker read a statement to the public regarding the general procedures for the hearings and requested that speakers submit a speaker's card for the item they wish to speak on. Commissioner Ruscigno made the motion and Commissioner Bains, second the motion, to approve the minutes of August 22, 2013.

3. **Requests for Deferrals and/or Continuance**

4. **Public Hearings Consent Calendar**

- a. **2311 Orlando Drive (491-28-034) Summary Abatement**
(Tony Gonzalez, Inspector / Chase Home Finance, Property Owner)
- b. **2829 Monterey Road (455-36-004) Summary Abatement**
(Tony Gonzalez, Inspector / Raisch Investment Group, Ltd., Property Owner)
- c. **1519 McGinness Avenue (488-07-030) Summary Abatement**
(Tony Gonzalez, Inspector / Wells Fargo Home Mortgage, Property Owner)
- d. **309 N 5th Street (249-46-057) Summary Abatement**
(Todd Waltrip, Inspector / Allen and Lillian Wong, Property Owners)
- e. **980 S 12th Street (472-12-010) Summary Abatement**
(Carolyn Slezak, Inspector / Pauline F. Kouvals-Prew, Property Owner)

There was a motion by Commissioner Ruscigno, seconded by Commissioner Kenny, to order as follows:

To approve the Consent Calendar for the properties located at 2311 Orlando Drive, 2829 Monterey Road, 1519 McGinness Avenue, 309 N 5th Street and 980 S 12th Street.

AYES: Bains, Kenny, Murphy, Parker, Ruscigno,

NAYS:

ABSENT: Overton, Shearin

5. **Deferred and/or Continued Items**

6. **Public Hearings**

a. **533 N 19th Street (249-26-050) Administrative Remedy**
(Todd Waltrip, Inspector / Robert L. Bard Sr., Et Al, Property Owner)

Code Enforcement Inspector Todd Waltrip gave a brief summary of what happened at the last Appeals Hearing Board meeting on November 8, 2012 regarding the property at 533 N 19th Street and that one of the exhibits submitted had an incorrect date on the compliance order and the Board did not approve code Enforcement's recommendation for an administrative order due to an error in the date of the compliance order that was included in the Board's packet.

Code Enforcement issued a new compliance order that was then delivered to Property Owner on November 9, 2012. The Property Owner was given until January 6, 2013 to comply with a reinspection date on January 7, 2013. On January 7, 2013, no one was home for the reinspection and the accumulation of items were still visible from the public street.

Inspector Todd Waltrip presented photos taken on September 12, 2013 and stated that the property owner still continues the recycling activities and the accumulation of items still exists and the tractor is still in the front yard.

Property Owner Robert Bard requested a continuance of 30 to 60 days and in order to retain a lawyer. Mr. Bard stated that the photos submitted to the Board were taken without Mr. Bard being present and stated that Inspector Waltrip has fabricated the alleged violations. Mr. Bard stated that he admits to owning the property and the accumulated items and debris belong to him and are still on the property and stated that he has rented and borrowed trailers to clean up the walkways and areas of his yard. Mr. Bard stated that these items are not junk but parts that are needed for cars and were purchased by him.

There was a motion by Commissioner Parker, seconded by Commissioner Bains, to order as follows:

Motion to uphold the City's recommendation and to modify the Administrative Penalties to \$75.00 per day from January 7, 2013 to September 12, 2013 for a total of \$18,675.00. If full compliance is not achieved by October 14, 2013, additional administrative penalties will be imposed in the amount of \$200.00 per day starting October 15, 2013 until the date of compliance.

AYES: Bains, Kenny, Murphy, Parker, Ruscigno,

NAYS:

ABSENT Overton, Shearin

b. 491 Auzerais Avenue (264-20-101) Administrative Remedy
(David Pieruccini, Inspector / Joseph Billalobos, Property Owner)

Code Enforcement Inspector David Pieruccini presented a summary of his inspection at the subject property. The violations observed were of an alteration of the garage walls, added enclosures, an addition of an attached accessory structure to the rear of the residence, conversion of the 2nd floor balcony to an enclosed storage room, an unpermitted water heater relocation, including a washer and dryer leak outside of the structure. Inspector Pieruccini stated that the owner obtained an invoice for a permit to revert which has been on file but has not been paid.

Property Owner Joseph Billalobos stated that he built the home and was going to sell it but then leased the property when the market went bad. Mr. Billalobos stated that the washer and dryer is not connected and is in storage. Mr. Billalobos stated that he has a permit to build his house and presented the permit and associated inspection reports to the Board. Inspector Pieruccini stated that the permit the property owner provided is the 2006 Permit when Mr. Billalobos first built his new house and that the modifications at issue before the Board were added after the 2006 Permit. Mr. Billalobos stated that there is nothing in the enclosure and that it is just a porch and is just an empty space.

Mr. Hector Hernandez stated that did the repairs to the house and helped to install the installation, sheet rock and the floor.

Ms. Claire Coman stated that the house has been an eye-sore since 2006, and the construction fence is still in place along with the cars parked on the lawn with multiple families occupying the residence.

Ms. Kathy Sutherland spoke in support of Code Enforcement's recommendation to require that the Property Owner bring the building up to Code.

Suzanna Cabrera from the audience requested that the property owner Mr. Billalobos have help from a translator. Gabriela Esparza volunteered to translate for the Property Owner and assisted with the translation for a portion of the hearing.

There was a motion by Commissioner Parker, seconded by Commissioner Murphy, to order as follows:

Motion to allow the property owner until November 15, 2013 to obtain all the necessary permits to bring the property into compliance and February 1, 2014 to final all permits. If the November 15, 2013 deadline is not met, additional administrative penalties in the amount of \$100.00 per day will be imposed. If all permits are not finalized by February 1, 2014, additional penalties in the amount of \$200.00 per day will be imposed. Administrative penalties in the amount of \$1,625.00 will only be imposed if compliance is not achieved by the dates specified above.

AYES: Bains, Kenny, Murphy, Parker, Ruscigno,
NAYS:
ABSENT Overton, Shearin

Chair Parker announced a recess of five minutes.

c. **27 Cleaves Avenue (261-32-025) Proposed Abatement**
(Carolyn Slezak, Inspector / Tommy E. Pugh, Property Owner)

Code Enforcement Inspector Carolyn Slezak testified that there has been phone contact with the property owner only once on July 28, 2011 and all correspondence has not been returned undeliverable.

The Property Owner was not present at tonight's meeting.

There was a motion by Commissioner Kenny, seconded by Commissioner Murphy, to order as follows:

Motion to adopt Code Enforcement's recommendations regarding 27 Cleaves Avenue.

AYES: Bains, Kenny, Murphy, Parker, Ruscigno,
NAYS:
ABSENT Overton, Shearin

d. **389 S 1st Street (264-29-118) Appeal Suspension of Entertainment of Entertainment Permit**

Sergeant Todd Trayer from the San Jose Police Vice Unit restated the hearing process prior to the appeal to the Appeals Hearing Board. Sergeant Trayer also highlighted a number of facts in support of the Deputy Chief's decision such prior discussion with the business owner and the promoter regarding cancellation of the event and the promoter's presence on stage on the night of the event.

Sergeant Todd Trayer stated that there are public entertainment permits that are issued to clubs, restaurants and venues that have these types of entertainments. The permits specify the planning, security, safety responsibilities and how businesses can clear out patrons after closing. Sergeant Trayer requests that the Board uphold the suspension to be enacted on Friday, September 20, 2013 at 6:00 p.m. through Friday, October 4, 2014 until 6:00 p.m. The duration of the suspension would be 14 days.

Business owner Teresa Nguyen was represented by legal counsel, Mr. Warren. Mr. Warren also cited to the administrative record. Mr. Warren argued that in order for Brandon to qualify as a promoter under the Code, Ms. Nguyen would have had to pay Brandon and there is no reliable evidence that Ms. Nguyen paid Brandon. He argued that the basis upon which the Deputy Chief found Brandon was a promoter were questionable and did not constitute substantial evidence.

The Board members cited to and discussed various references in the administrative record and asked questions of both Mr. Warren and Sergeant Trayer before making a motion.

There was a motion by Commissioner Parker, seconded by Commissioner Kenny, to order as follows:

Uphold the decision of Deputy Chief of Police David J. Hober for the 14 day suspension to commence on September 20, 2013 at 6:00 p.m. and expire on October 4, 2013 at 6:00 p.m.

AYES: Bains, Kenny, Murphy, Parker, Ruscigno,
NAYS:
ABSENT Overton, Shearin

7. **Request for Excused Absence**

8. **Other Business**

Secretary Debbie Morales asked the Board if they have any items they would like to discuss at the Appeals Hearing Board Retreat. Commissioner Murphy stated that he will email Secretary Debbie Morales with that he would be interested in for the retreat.

9. **Open Forum - Oral Communication from the Public**

10. **Adjournment**

There was a motion by Commissioner Kenny, seconded by Commissioner Ruscigno to adjourn the meeting. Chair Parker adjourned the meeting at 9:20 p.m. The Appeals Hearing Board Retreat will be held on Thursday, September 26, 2013 at 6:00 p.m. in Room T-332.